APPENDIX A

In the United States Court of Claims

No. 518–59

(Decided October 15, 1965)

GEORGIA L. LUSK AND MYRON WIENER v. THE UNITED STATES

I. H. Wachtel, attorney of record, and *Jean L. Provost, Jr.*, for plaintiff.

Irving Jaffe, with whom was *Assistant Attorney General John W. Douglas*, for defendant. *Gerson B. Kramer* and *Ned William Manashil*, of counsel.

Before COWEN, *Chief Judge*, REED, *Justice* (*Ret.*), sitting by designation, LARAMORE, DURFEE, and COLLINS, *Judges*.

ON DEFENDANT'S MOTION AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

COLLINS, *Judge*, delivered the opinion of the court:

Plaintiffs were, prior to their removal in December 1953, members of the War Claims Commission. In this action, each plaintiff seeks to recover the salary of a War Claims Commissioner for the period July 1, 1954, to March 31, 1955. Defendant has moved for summary judgment, and plaintiffs have filed a cross-motion for summary judgment.

The pertinent facts, which have been stipulated by the parties, can be summarized as follows: Effective as of December 11, 1953, President Dwight D. Eisenhower terminated each plaintiff's membership on the War Claims Commission. The underlying reason for the action of President Eisenhower was his determination that the Commission should be

composed of "personnel of my own selection." On December 18, 1953, plaintiffs wrote the Attorney General and requested the institution of a suit on behalf of the United States (*ex rel.* Myron Wiener and Georgia L. Lusk) against the persons who had succeeded them as members of the War Claims Commission. The Attorney General refused this request.

On February 3, 1954, plaintiff Wiener commenced, in the United States District Court for the District of Columbia, a *quo warranto* proceeding against the successor War Claims Commissioners. Holding that the removal of Wiener had been proper, the district court dismissed his action. On March 31, 1954, Wiener took an appeal to the United States Court of Appeals for the District of Columbia Circuit.

Thereafter, on April 29, 1954, acting pursuant to the Reorganization Act of 1949,[1] President Eisenhower transmitted to the Congress Reorganization Plan No. 1 of 1954. This plan proposed, *inter alia*, the abolition of the War Claims Commission and the transfer of its functions and those of the International Claims Commission to a new agency to be known as the Foreign Claims Settlement Commission. Neither House of Congress passed a resolution expressing disapproval of the reorganization plan. Accordingly, on July 1, 1954, the President abolished the War Claims Commission and put into effect the other provisions of the reorganization plan.[2] As a consequence of the abolishment of the War Claims Commission, the parties to the *quo warranto* suit stipulated that the action had "become moot." Thus, Wiener's appeal was dismissed.

On August 20, 1954, plaintiff Wiener filed an action in the Court of Claims. He asserted that his removal had been unlawful, and he sought to recover back pay for the period from December 10, 1953, through June 30, 1954. This court determined that the removal of Wiener had been valid and, therefore, his petition was dismissed. *Wiener* v. *United States*, 135 Ct. Cl. 827, 142 F. Supp. 910 (1956). Subsequently, this decision was reversed by the Supreme Court.

---

[1] The Reorganization Act of 1949, 63 Stat. 203, as amended, 5 U.S.C. §§ 133z to z–15 (1964), is discussed *infra*.

[2] Reorganization Plan No. 1 of 1954 is set forth in the following: 19 Fed. Reg. 3985, 68 Stat. 1279, 5 U.S.C. § 133z–15 (1964).

357 U.S. 349 (1958). On September 5, 1958, the Court of Claims entered a judgment in favor of plaintiff Wiener in the net amount of $7,220.66. 143 Ct. Cl. 956 (1958).

Shortly after final disposition of Wiener's action in this court, plaintiff Lusk submitted to the General Accounting Office a claim for the pay which she had lost as a result of her removal from the War Claims Commission, *i.e.*, her salary from December 11, 1953, to June 30, 1954. On December 16, 1958, the Comptroller General certified that the claim of plaintiff Lusk was a valid one; shortly thereafter, she was paid the appropriate amount.

By a joint petition filed on December 2, 1959, plaintiffs instituted the present suit. The basis for this action is plaintiffs' contention that the abolishment of the War Claims Commission was unlawful. The period for which recovery is sought commences with July 1, 1954, the date the reorganization became effective, and ends on March 31, 1955, the date when plaintiffs' statutory terms of office were to expire.[3]

The argument of plaintiffs is twofold. First, they contend that the reorganization plan in question went beyond the scope of the Reorganization Act of 1949, 63 Stat. 203, as amended, 5 U.S.C. §§ 133z to z–15 (1964). Alternatively, plaintiffs assert that the reorganization of the War Claims Commission was in violation of the Constitution.

With respect to the initial argument of plaintiffs, a basic element is the fact, pointed out by the Supreme Court in *Wiener* v. *United States*, *supra*, that the task of the War Claims Commission was "intrinsic[ally] judicial" in character. The Court stated, 357 U.S. 349, 355, the following:

> * * * The claims [considered by the War Claims Commission] were to be "adjudicated according to law," that is, on the merits of each claim, supported by evidence and governing legal considerations, by a body that was "entirely free from the control or coercive influence, direct or indirect," *Humphrey's Executor* v. *United States*, * * * [295 U.S. 602, 629 (1935)], of either the Executive or the Congress. * * *

[3] The date for the expiration of the terms of the War Claims Commissioners (March 31, 1955) was established by § 2 of the War Claims Act of 1948, ch. 826, § 2, 62 Stat. 1240, as amended, ch. 27, 65 Stat. 28 (1951).

It should be recalled that the prior recovery sought and obtained by plaintiffs Lusk and Wiener, respectively, extended only to June 30, 1954.

In the instant case, plaintiffs stress the distinction between (1) the adjudicatory functions of the War Claims Commission and (2) its executive and administrative functions. According to plaintiffs, only the latter type of activities could properly be affected by a reorganization plan. Thus, plaintiffs assert that, in abolishing the War Claims Commission and in transferring all of its functions to a new agency,[4] the President exceeded his statutory authority.

In order to resolve this matter of interpretation of the Reorganization Act of 1949, we must look first to the statute itself. The fundamental characteristic of the Reorganization Act of 1949 and of prior similar acts was the use of cooperation between the executive and legislative branches in order to achieve executive reorganization. See H.R. Rep. No. 23, 81st Cong., 1st Sess. 6 (1949). The 1949 act set forth a procedure whereby the President would submit reorganization plans to the Congress and such plans would take effect after 60 days (of continuous session of Congress) unless either House passed a resolution of disapproval. 63 Stat. 205, as amended, 5 U.S.C. § 133z–4 (1964).

Unlike its predecessor (the Reorganization Act of 1945), the 1949 act contained no express limitation with regard to the effects which a reorganization plan might have upon "quasi-judicial or quasi-legislative" functions.[5] Plaintiffs assert that such a restriction should be read into the 1949 act, but we do not agree.

---

[4] Plaintiffs stress the fact that, under Reorganization Plan No. 1 of 1954, members of the Foreign Claims Settlement Commission held office "during the pleasure of the President," whereas the President had lacked the power to remove members of the War Claims Commission (*Wiener* v. *United States*, *supra*). Also, plaintiffs point out that, in 1962, Congress amended the War Claims Act to provide that, in the future, members of the Foreign Claims Settlement Commission would have fixed terms of office. 76 Stat. 1113 (1962), 50 U.S.C. App. § 2001 (Supp. V, 1959–63).

[5] Section 5(a) of the Reorganization Act of 1945, ch. 582, § 5(a), 59 Stat. 615, provided, in part, as follows:

"• • • No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—

• • • • •

"(6) imposing, in connection with the exercise of any quasi-judicial or quasi-legislative function possessed by an independent agency, any greater limitation upon the exercise of independent judgment and discretion, to the full extent authorized by law, in the carrying out of such function, than existed with respect to the exercise of such function by the agency in which it was vested prior to the taking effect of such reorganization; except that this prohibition shall not prevent the abolition of any such function; • • •"

We find, contrary to plaintiffs' contentions, that Congress did *not* wish the Reorganization Act of 1949 to impose any general limitation upon the reorganization of quasi-judicial and quasi-legislative functions. Each House of Congress accepted the recommendation of the Hoover Commission that no such limitation should be adopted. See S. Rep. No. 232, 81st Cong., 1st Sess. 8 (1949), and H.R. Rep. No. 23, 81st Cong., 1st Sess. 7 (1949).

In explaining its general opposition to exemptions and to limitations on the power of the President to prepare reorganization plans, the Hoover Commission expressed the belief that "the safeguard against unwise reorganization plans lies both in a sound exercise of the President's discretion and in the reserve power in the Congress * * * to disapprove any proposed plan."[6] A similar view was stated by President Truman in his January 17, 1949, message to the Congress. See S. Rep. No. 232, 81st Cong., 1st Sess. 5 (1949). With respect to the present litigation, the following statements of the Hoover Commission[7] are especially relevant:

> * * * the inclusion of general language, like that contained in section 5(a)(6) of the Reorganization Act of 1945 * * * [see footnote 5, *supra*], intended to prevent the submission of any plan which imposes limitations upon the independent exercise of "quasi legislative" or "quasi judicial" functions, would, in the Commission's judgment, be unwise. The phrases are extremely vague and of uncertain meaning. Ingenious and plausible arguments can be made to apply them to a wide range of functions which should clearly be subject to reorganization procedure. *Such arguments would not be matters of purely theoretical concern or legislative debates; for the validity of reorganization could be made the subject of protracted litigation by private interests resisting the acts of a reorganized agency on the ground that it was illegally constituted.* It might take several years of litigation to lay down interpretations

[6] On January 13, 1949, the Honorable Herbert Hoover, Chairman of the Commission on Organization of the Executive Branch of the Government, sent to each House a letter containing recommendations as to legislation on reorganizations. These letters were included in the respective reports. See S. Rep. No. 232, 81st Cong., 1st Sess. 2 (1949), and H.R. Rep. No. 23, 81st Cong., 1st Sess. 3 (1949).

[7] These statements were contained in the letters referred to in footnote 6, *supra*.

> of these general phrases and even then, uncertainty would remain. (Emphasis supplied.)

As indicated above, this recommendation of the Hoover Commission and the similar one of President Truman were accepted by the Congress. Plaintiffs' construction of the 1949 act attributes to Congress a purpose which each House expressly disavowed. For this reason, we reject the assertion of plaintiffs that the reorganization of the War Claims Commission fell outside the limits of the act.[8]

After receiving from President Eisenhower the reorganization plan in question, neither House of Congress passed a resolution disapproving it. In view of the terms of the Reorganization Act of 1949, it is clear that, by not exercising its power of disapproval, the Congress indicated its full acceptance of the plan.[9] Although plaintiffs dispute this view (on the ground that the plan was not within the ambit of the 1949 act), they furnish no specific evidence in support of their position. That is, there is no indication whatsoever that the Congress considered the reorganization of the War Claims Commission to be "unlawful." We hold, therefore, that the Congress did intend Reorganization Plan No. 1 of 1954 to become effective.

Furthermore, there exists an additional reason why plaintiffs cannot succeed with their assertion that the reorganization plan exceeded the limits of the Reorganization Act of 1949. One of the affirmative defenses put forth by defendant is that of laches, and we agree with defendant that plaintiffs' action is barred by laches.

Although pertinent to plaintiffs' initial argument, the defense of laches applies with special force to their second argument, *i.e.*, their effort to challenge the constitutionality of the Reorganization Act of 1949. Basically, the second

---

[8] Since we have determined, on the basis of the language and the legislative history of the Reorganization Act of 1949, that plaintiffs' interpretation is not correct, we deem unnecessary discussion of the arguments as to the "contemporaneous construction" of that act.

[9] Citing *Greene* v. *McElroy*, 360 U.S. 474, 507 (1959), plaintiffs assert that congressional inactivity cannot cure the invalidity of the exercise by the executive of power not delegated or not properly delegated. One difficulty with this assertion is that plaintiffs appear to overlook the specific function, under the Reorganization Act of 1949, of "congressional inactivity." See the discussion, *supra*, of legislative-executive cooperation under the 1949 act. The facts of *Greene* v. *McElroy* are readily distinguishable from those of the present case.

argument of plaintiffs is that, if Congress did intend to grant to the President the powers exercised in reorganizing the War Claims Commission, such a delegation contravenes the Constitution.[10] Plaintiffs declare that abolition of the Commission amounted to repeal by the President of the War Claims Act of 1948, ch. 826, § 2, 62 Stat. 1240, as amended, ch. 27, 65 Stat. 28 (1951). Further, according to plaintiffs, the Reorganization Act of 1949 embodied such a broad delegation of legislative power that the act cannot be allowed to stand.

Since we hold that plaintiffs are precluded, on the ground of laches, from attacking the constitutionality of the Reorganization Act, we decline to discuss the merits of their argument.[11] It is sufficient to point out our reasons for applying the doctrine of laches.

The first element of laches is unreasonable delay, and plaintiffs are guilty of such delay. The matter complained of, abolition of the War Claims Commission, occurred on July 1, 1954. The present suit was not filed until December 2, 1959, 5 years and 5 months later. In other cases which involved periods of much shorter duration, this court has raised the bar of laches. See *Alpert* v. *United States*, 161 Ct. Cl. 810, 820 (1963), and cases cited there.

As indicated in *Alpert* v. *United States*, *supra*, at 821, laches is an "equitable doctrine," and it will not be applied when the plaintiff provides a satisfactory explanation for the delay or when the defendant fails to show resulting prejudice. The explanation offered by the present plaintiffs is not a sufficient one. Plaintiffs state that they have been diligent in seeking relief, since it was not until June 30, 1958 (the date the Supreme Court ruled that the removal of Wiener had been unlawful), that their right to bring the present suit "matured."

Aside from the fact that 17 months elapsed between the decision of the Supreme Court and the commencement of

---

[10] Regarding the matter of the delegation of legislative power, plaintiffs cite the following cases: *Yakus* v. *United States*, 321 U.S. 414 (1944); *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935).

[11] In declining to discuss the constitutional issues, we are mindful of the general policy that constitutional questions should not be decided unless it is absolutely necessary to do so. *Cf., e.g., United States* v. *International Union United Automobile Workers*, 352 U.S. 567, 590 (1957).

this action, there is a basic fallacy in plaintiffs' view. It is true that plaintiffs would not have been able to *recover* on the basis of their present theory until it was determined that their removal was wrongful. However, the *accrual* of plaintiffs' action was not dependent upon such a determination, but in fact occurred prior thereto. For instance, Wiener could have amended the petition in his prior action in this court so as to include the claim now being asserted. Similarly, plaintiff Lusk could have commenced a suit immediately after the abolition of the War Claims Commission. Yet, until the bringing of the instant suit, there was no manifestation by either plaintiff of intent to attack the validity of the reorganization. Plaintiffs have not been diligent in pressing this claim.

With regard to the matter of detriment to the Government, the present case differs from the typical employee-removal suit. Often, laches is applied to prevent a dilatory plaintiff from recovering back salary for a lengthy period during which he rendered no service to the Government. *E.g.*, *Alpert* v. *United States*, *supra*, at 821. See *United States ex rel. Arant* v. *Lane*, 249 U.S. 367, 372 (1919).

In the instant case, much more is at stake. Acceptance of plaintiffs' argument regarding the unconstitutionality of the 1949 act would mean, at the very least, that Reorganization Plan No. 1 of 1954 was invalid. If we were to make such a holding, this would strike down not only the abolition of the War Claims Commission, but also the establishment of the Foreign Claims Settlement Commission. The latter body is still in existence and it has been functioning throughout the period of plaintiffs' delay. To hold invalid or unconstitutional the plan which created the Foreign Claims Settlement Commission would amount to an invitation to suits on the part of disappointed claimants.[12] In fact, this possibility of "litigation by private interests resisting the acts of a reorganized agency on the ground that it was

[12] It might be argued that no such suit could succeed since decisions of the Foreign Claims Settlement Commission are entitled to finality. See, *e.g.*, § 11 of the War Claims Act of 1948, 62 Stat. 1246, as amended, 50 U.S.C. App. § 2010 (Supp. V, 1959–63). However, a dissatisfied claimant could assert that Congress could not give finality to the determinations of an agency created by an unlawful reorganization plan. It would seem that the finality provision presupposes the validity of the Foreign Claims Settlement Commission.

illegally constituted" is the precise danger which the Hoover Commission warned against in its above-mentioned letters to the Congress. Plaintiffs, by neglecting to bring the present action until December 1959, permitted an increase in the possible amount of such litigation. This in itself constitutes sufficient prejudice to the Government.

Plaintiffs' efforts to minimize the consequences of their delay are not persuasive. They say that any possible claims would be barred by the 6-year statute of limitations, since the "War Claims Act jurisdiction" of the Foreign Claims Settlement Commission expired on March 31, 1955. Plaintiffs' error is their assumption that only decisions under the "War Claims Act jurisdiction" would be "cast into doubt." As we have indicated, if the plan which created the Foreign Claims Settlement Commission were invalid, then virtually *all* decisions of that body would be vulnerable. Abolition of the War Claims Commission and establishment of the Foreign Claims Settlement Commission were integral parts of the reorganization plan. It would be incongruous to say that (1) the abolition was not lawful, but (2) creation of the successor body was effective. *Cf. Fowler* v. *Gage*, 301 F. 2d 775, 778 (10th Cir. 1962). Thus, we reject plaintiffs' contention.

Next, plaintiffs assert that the doctrine of "*de facto* officers" would prevent the reopening of the determinations of the Foreign Claims Settlement Commission. To illustrate this doctrine, plaintiffs cite *McDowell* v. *United States*, 159 U.S. 596 (1895) and *Ex parte Ward*, 173 U.S. 452 (1899). This argument of plaintiffs overlooks an important distinction. If the reorganization plan were invalid, the result would be not *de facto officers*, but *de facto offices*. Regarding the latter, a pertinent decision is *Norton* v. *Shelby County*, 118 U.S. 425, 441 (1886), where the Court stated:

> * * * it is contended that if the act creating the board was void, and the commissioners were not officers *de jure*, they were nevertheless officers *de facto*, and that the acts of the board as a *de facto* court are binding upon the county. This contention is met by the fact that there can be no officer, either *de jure* or *de facto*, if there be no office to fill. As the act attempting to create the office of commissioner never became a law, the office never came into existence. * * *

See also *United States* v. *Royer*, 268 U.S. 394, 397 (1925). Since the above reasoning would appear to be applicable here, plaintiffs' suggestion as to the *de facto* officer doctrine is not sound.

In conclusion, we hold that the defense of laches bars plaintiffs' attack on the constitutionality of the Reorganization Act of 1949. This defense applies as well to plaintiffs' contention regarding interpretation of the 1949 act. Moreover, we have found that there is no merit in the statutory interpretation put forth by plaintiffs. In view of these determinations, we need not consider the other defenses which defendant has asserted.

It follows, therefore, that plaintiffs are not entitled to recover. Their motion for summary judgment is denied. Defendant's motion for summary judgment is granted, and the petition is dismissed.

APPENDIX B

[Filed for Defendant,
Mar. 18, 1964,
Office of the Clerk
U.S. Court of Claims]

IN THE
UNITED STATES COURT OF CLAIMS

GEORGIA L. LUSK and MYRON WIENER, Plaintiffs,	)	
v.	)	No. 518-59
THE UNITED STATES, Defendant.	)	

STIPULATION OF FACTS

It is hereby stipulated by and between counsel for the respective parties that the following facts shall be considered as having been proved in this case:

1. On or before December 10, 1953 plaintiffs Myron Wiener and Georgia L. Lusk were serving as War Claims Commissioners under valid appointments made by the President, by and with the advice and consent of the Senate of the United States.

2. Under date of December 10, 1953 each of the plaintiffs received a letter from Dwight D. Eisenhower, President of the United States, which stated as follows:

I regard it as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of my own selection. To that end, Mr. C. F. Willis, Jr. of my staff transmitted my wish that you and your associate resign your commissions. I understand from Mr. Willis that you are unwilling to do so.

Accordingly, effective as of December 11, 1953, you are hereby removed from the office of Member of the War Claims Commission.

3. On December 11, 1953 the President made recess appointments of other individuals to take the place of the plaintiffs. By letter dated December 14, 1953 plaintiff Myron Wiener notified the President in writing of his opposition to the removal action, advising him that he held himself available and ready to perform the duties of his office as a War Claims Commissioner (See Finding 6, 135 C.Cls. 835-838).

4. Under date of December 18, 1953 the plaintiffs, Myron Wiener and Georgia L. Lusk, by their attorney, wrote to the Attorney General requesting that either he or the United States Attorney for the District of Columbia, under the provisions of Chapter XVI of the District of Columbia Code, 31 Stat. 1319, institute suit on behalf of the United States on the relation of Myron Wiener and Georgia L. Lusk against the incumbent holders of the office of members of the War Claims Commission. This request was refused.

5. Thereafter, under date of February 3, 1954 the plaintiff, Myron Wiener but not the plaintiff Georgia L. Lusk, instituted an action in the United States District Court for the District of Columbia applying for a writ in the nature of *quo warranto* against the successor incumbent members of the War Claims Commission. This action was denominated *"The United*

States of America ex rel. Myron Wiener v. Raymond T. Armbruster, Whitney Gilliland and Pearl Carter Pace, Civil Action 447-54". Thereafter the writ issued and a hearing was had on respondents' motion to dismiss or in the alternative for summary judgment; on March 30, 1954 the writ was quashed and the action dismissed in accordance with the Court's opinion of March 25, 1954 that the President's removal action was valid and constitutional. Under date of March 31, 1954 the petitioner-relator, Myron Wiener, took an appeal from the District Court's order of dismissal.

6. Under date of April 29, 1954 the President transmitted to the Congress Reorganization Plan No. 1 of 1954 which plan, *inter alia,* proposed to abolish the War Claims Commission, effective July 1, 1954 and to transfer its functions to a newly created commission entitled "The Foreign Claims Settlement Commission of the United States." (See House Document No. 381, 83rd Congress, 2d Sess.) Between April 29, 1954 and July 1, 1954 the Congress of the United States took no action on the aforesaid reorganization plan.

7. On July 1, 1954 the President, acting pursuant to Reorganization Plan No. 1 of 1954, abolished the War Claims Commission, including the offices of the members of said Commission, and transferred all of the functions of said Commission and the members thereof to the newly created Foreign Claims Settlement Commission of the United States.

8. On August 9, 1954 the petitioner-relator and the respondents filed an agreement to dismiss the pending appeal in the *quo warranto* action. Said Agreement of Dismissal in pertinent part stated as follows:

"IT IS HEREBY AGREED between the parties hereto, inasmuch as the War Claims Commission has been abolished by Reorganization Plan No. 1 of 1954 (19 Fed. Reg. 3985) and this action has become moot, that the above-entitled cause be dismissed under Rule 21, and the Clerk is hereby directed to enter the case dismissed, . . ."

9. Under date of August 20, 1954 Myron Wiener filed an action in this Court which was assigned Docket No. 337-54, which action claimed back pay from December 10, 1953 through June 30, 1954 on the ground that the President's removal action was illegal and unconstitutional. Thereafter there was a full trial on the merits of the aforesaid action in this Court and the Commissioner of the Court made full and complete findings of fact upon the record established.

10. By decision dated July 12, 1956 this Court upheld the validity of the President's removal action and dismissed the petition of Myron Wiener (135 C.Cls. 827). Whereupon, plaintiff petitioned the Supreme Court for a writ of certiorari which petition was granted by that Court (352 U.S. 980). After hearing plaintiff Wiener's case the Supreme Court, by decision dated June 30, 1958, 357 U.S. 349, reversed the decision of this Court and held that plaintiff's removal from office was unlawful. (See 142 C.Cls. 932).

11. Thereafter, on August 19, 1958, counsel for the parties in the aforesaid action filed a stipulation with this Court, agreeing that plaintiff Myron Wiener was entitled to entry of judgment in the net amount of $7,220.66 which sum represented the difference between the sum of $8,197.06, the amount of plaintiff's claim in the aforesaid action, and the sum of $976.40,

the amount of a counterclaim, with interest, asserted by defendant in said action (See 143 C.Cls. 950). The defendant's counterclaim concerned an independent matter not otherwise pertinent herein. On September 5, 1958 this Court entered judgment in favor of Myron Wiener in the sum of $7,220.66, which sum, thereafter, was paid to Myron Wiener by defendant.

12. Soon after the disposition of the case, *Myron Wiener v. United States*, the plaintiff Georgia L. Lusk, through her attorney, submitted a claim to the General Accounting Office for pay lost as a result of her illegal removal from her office as a member of the War Claims Commission. Said claim was set forth in a letter dated September 3, 1958 from plaintiff's attorney to the Comptroller General (See Exhibit 1 to Defendant's Answer). Said claim was supplemented by an affidavit of plaintiff Georgia L. Lusk in support of her claim (See Exhibit 2 to Defendant's Answer), and a power of attorney executed by plaintiff Georgia Lusk (See Exhibit 3 to Defendant's Answer). In the aforesaid submissions to the General Accounting Office plaintiff Georgia L. Lusk requested pay on account of salary lost from December 10, 1953 to and including June 30, 1954.

13. Under date of December 16, 1958 the Comptroller General issued a certificate of settlement certifying that there was due from the United States to Georgia L. Lusk the sum of $8,197.06 on account of salary for the period December 11, 1953 to June 30, 1954 as a member of the War Claims Commission (See Exhibit 4 to Defendant's Answer). Thereafter, plaintiff Georgia L. Lusk was paid the aforesaid sum less appropriate deductions for civil service retirement contributions and income tax withholding.

14. The joint petition of plaintiffs Georgia L. Lusk

and Myron Wiener in the instant case was filed on December 2, 1959.

It is further stipulated and agreed that the documents appearing as Exhibits 1, 2, 3, and 4 to Defendant's Answer, filed April 29, 1960, shall be deemed a part of the record in this case and may be considered as having been offered in evidence herein.

I. H. WACHTEL
Attorney for Plaintiffs

JOHN W. DOUGLAS
Assistant Attorney General
Civil Division

GERSON B. KRAMER
Attorney, Civil Division
Department of Justice